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Before the
Federal Communications Commission
Washington, D.C. 20554

DISPATCHED BY

MM Docket No. 93-224

In the Matter of

Amendment of Section 73.202(b).	RM-8291
Table of Allotments,	RM-8325
FM Broadcast Stations.	RM-8358
(Bismarck, Centreville, Farmington,	RM-8360
Ironton, Missouri and	
Herrin, Illinois) ¹	

REPORT AND ORDER
(Proceeding Terminated)

Adopted: May 1, 1995;

Released: May 9, 1995

By the Chief, Allocations Branch:

1. The Commission has before it for consideration the *Notice of Proposed Rule Making*, 8 FCC Rcd 5203 (1993), issued in response to a petition filed by KREI, Inc. ("KREI"), proposing the allotment of Channel 258C3 to Farmington, Missouri, as that community's second FM broadcast service. MKS Broadcasting, Inc. ("MKS") filed comments supporting an allotment at Farmington, indicating it will file an application for Channel 258C3. Counterproposals were filed by Wayne E. Tate ("Tate"), KREI, and Wayne E. Tate and David E. Smith Communications, Inc. ("Tate and Smith").² Tate and Smith and KREI filed reply comments. On July 20, 1994, David E. Smith Communications, Inc. withdrew the portion of its counterproposal which requested the allotment of Channel 224A to Centreville, Missouri.³ A motion for leave to file statement and statement were filed by KREI after the record closed.⁴

2. Tate counterproposed the substitution of Channel 224B1 for Channel 224A at Herrin, Illinois, and modification of the license for Station WVZA to specify operation on Channel 224B1. To accommodate the upgrade at Herrin, Tate also requested the substitution of Channel 258A for Channel 224A at Ironton, Missouri, and modification of the license for Station KYLS. Tate acknowledged his obligation to the licensee at Ironton pursuant to *Circleville, Ohio*, 8 FCC 2d 159 (1967). In support of the counterproposal, Tate states that the upgrade at Herrin will increase the area covered by approximately 95 percent and will result in a 36 percent increase in population served

from 129,257 to 176,133 and will clearly be in the public interest. Also, Station KYLS, Ironton, operates with 0.64 kilowatts of power at a height of 204 meters above average terrain which is approximately equivalent to three kilowatts at 100 meters HAAT. According to Tate, the proposed substitution at Ironton will permit full six kilowatt operation by Station KYLS.

3. The counterproposal filed by KREI proposes to allot Channel 258C3 to Bismarck, Missouri, in lieu of Farmington. KREI states that Bismarck is an incorporated community with a population of 1,579 (1990 Census), with its own city council and elected mayor. Bismarck operates a police department, fire department and its own schools. Further, there are a variety of businesses and professions which identify themselves with Bismarck. KREI notes that the community of Bismarck observed its 125th anniversary in July, 1993. KREI maintains that the allotment at Bismarck will provide a first aural service which is superior to the allotment of a third aural service at Farmington. KREI states that it will file an application for Channel 258C3 at Bismarck.

4. Tate and Smith submitted a joint counterproposal requesting the substitution of Channel 258C3 for Channel 224A at Ironton, Missouri, and modification of the license for Station KYLS, substitution of Channel 224B1 for Channel 224A at Herrin, Illinois, and modification of the license for Station WVZA. Smith, licensee of Station KYLS, Ironton, has consented to Tate's proposed substitution of channels at Ironton but requests the new channel be allotted as a class C3 rather than a Class A channel.

5. KREI filed reply comments stating that the public interest will be served by the allotment of Channel 258C3 at Bismarck, Missouri. The allotment will provide Bismarck with its first aural transmission service. KREI provided information to support Bismarck's status as a community for allotment purposes. KREI contends that Bismarck has a greater need for a new service than does Farmington as Farmington is currently served by two commercial FM stations. Finally, the Class C3 allotment at Bismarck is comparatively superior to the B1 and C3 upgrades at Herrin and Ironton. Neither upgrade will provide service to a white or grey area, and for this reason, the provision of a first aural transmission service at Bismarck is comparatively superior under Section 307(b) of the Communications Act.

6. Tate and Smith submitted joint comments on the counterproposals filed in this proceeding. Tate and Smith argue that the upgrade proposals for Ironton and Herrin better serve the public interest than KREI's allotment to a single community--Bismarck, Missouri. While a first local service would be brought to Bismarck, the community is located in St. Francis County, which is already served by radio stations at Farmington and Flat River. Tate and Smith contend that their proposal for Herrin will result in an increase in population covered from 129,257 to 176,133 and the upgrade at Ironton will provide an increase from

¹ The communities of Herrin, Illinois, Ironton, Bismarck and Centreville, Missouri, have been added to the caption.

² The counterproposals were put on public notice on October 22, 1993 (Report No. 1978).

³ In accordance with Section 1.420(j) of the Commission's Rules, David E. Smith Communications, Inc. states that it has not received consideration of any type for withdrawal of that portion of its counterproposal supporting the allotment of an

FM channel at Centreville, Missouri. No further consideration will be given to an allotment at Centreville, Missouri, since the proposal has been withdrawn.

⁴ The Commission's Rules do not contemplate the filing of pleadings beyond the comment and reply comment period. Therefore, in accordance with Section 1.415(d) of the Commission's rules, we shall not accept the unauthorized pleadings.

12,249 people to 59,228 people. Tate and Smith believe that the increased population served by the two upgrades outweigh the new service proposed by KREI at Bismarck. Tate and Smith, therefore, request that the Commission grant the allotment of Channel 224B1 at Herrin and Channel 258C3 at Ironton.

7. A review of the proposals indicates that Bismarck, Farmington, Ironton, Missouri and Herrin, Illinois, are all deserving of new or expanded service. In an effort to provide each community with new or expanded service, the staff performed a search to determine if alternate channels were available. The study indicates that there are no alternate channels available to resolve the conflicts. Our decision is therefore guided by the allotment priorities as set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). These priorities are: (1) First full-time aural service; (2) Second full-time aural service; (3) First local service; and (4) Other public interest matters. [Co-equal weight given to priorities (2) and (3)]. The proposal for Herrin, Illinois, substitutes Channel 224B1 for Channel 224A.⁵ The upgrade at Herrin requires the substitution of Channel 258A or Channel 258C3 for Channel 224A at Ironton, Missouri. Expanded service would be provided to Herrin and Ironton. The proposal will not provide a first local service to either community and Tate and Smith did not make a showing that either channel would provide any first or second full-time aural service. The proposal to add Channel 258C3 to Farmington, Missouri, would provide a second local FM service to the community. The proposal to add Channel 258C3 at Bismarck will provide a first local service to the community fulfilling priority (3). The proposals for Herrin, Ironton and Farmington would be compared under priority (4) - Other public interest factors. However, since the proposal for Bismarck will fulfill priority (3) - First local service, we will allot Channel 258C3 to Bismarck. The Commission usually favors a new service over an upgrading of an existing service. See *Benton, Arkansas, et al.*, 2 FCC rcd 1963 (1982) and 3 FCC Rcd 4840 (1988).

8. Channel 258C3 can be allotted to Bismarck, Missouri, in compliance with the Commission's spacing requirements provided there is a site restriction 15.3 kilometers (9.5 miles) southeast of the community.⁶ The site restriction will prevent a short spacing to Station KFUD-FM, Channel 256C, Clayton, Missouri, Station KZYQ-FM, Channel 259C3, St. James, Missouri, and Station KDJR, Channel 261A, De Soto, Missouri.

9. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **June 23, 1995**, the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED for the community listed below, to read as follows:

Community	Channel No.
Bismarck, Missouri	258C3

⁵ Wayne E. Tate, licensee of Station WVZA, Herrin, Illinois, has filed an application in accordance with the Commission's "one-step" procedures to change its channel from 224A to Channel 224B1 (BPH-931230IB). David E. Smith, licensee of Station KYLS, Ironton, Missouri, has filed an application in accordance with the Commission's "one-step" procedures to

10. The window period for filling applications for Channel 258C3 at Bismarck, Missouri, will open on **June 23, 1995**, and close on **July 24, 1995**.

11. IT IS FURTHER ORDERED, That the petition filed by KREI, Inc. (RM-8291) IS DISMISSED.

12. IT IS FURTHER ORDERED, That the counterproposal filed by Wayne E. Tate (RM-8325) IS DISMISSED.

13. IT IS FURTHER ORDERED, That the counterproposal filed by Wayne E. Tate and David E. Smith Communications, Inc. (RM-8360) IS DISMISSED.

14. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

15. For further information concerning this proceeding, contact Kathleen Scheuerle, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
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Mass Media Bureau

change its channel from 224A to Channel 225A (BPH-931230IE). The applications were filed simultaneously as the substitution at Ironton will accommodate the upgrade at Herrin.

⁶ The coordinates for Channel 258C3 at Bismarck are 37-38-43 and 90-32-54.